

IN THE MATTER between **NTHC**, Applicant, and **DE and LC**, Respondents.

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act");

AND IN THE MATTER of a hearing before **Janice Laycock**, Rental Officer,

BETWEEN:

NTHC

Applicant/Landlord

-and-

DE and LC

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: March 10, 2021

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: PS, representing the Applicant
DE, Respondent
KB, in support of the Respondents

Date of Decision: March 11, 2021

REASONS FOR DECISION

An application to a rental officer made by the YHA on behalf of the NTHC as the Applicant/Landlord against DE and LC as the Respondents/Tenants was filed by the Rental Office January 29, 2021. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The filed application was served on the Respondents by registered mail on February 12, 2021.

The Applicant claimed that the Respondents were responsible for causing damages to their former rental unit. An order was sought for payment of the costs of repairs and cleaning.

A hearing was held on March 10, 2021, by three-way teleconference. PS appeared representing the Applicant. DE appeared as the Respondent, with KB, a Pathfinder with the Integrated Case Management division of the Department of Justice, appearing in support of the Respondents.

At the hearing I reserved my decision in order to review the testimonies and the evidence provided, and to further consider the *Residential Tenancies Act* (the Act) and the written tenancy agreement.

Tenancy agreement

Evidence was presented establishing a written residential tenancy agreement between the parties for subsidized public housing beginning on April 1, 2012, and continuing on a month-to-month basis. I am satisfied a valid tenancy agreement is in place in accordance with the Act.

Repairs and cleaning

According to the testimony of the parties, the Respondents moved from one apartment to another on November 10, 2020. On November 13, 2020, an exit inspection was carried out at the former apartment by the Applicant. The Respondents did not participate in this inspection, but prior to handing in the keys the Respondents took pictures and did their own walk through.

The Applicant provided as evidence a copy of the entry and exit inspection reports, photographs documenting repairs and cleaning, and a document titled "December 23-20, Re: Tenant Damages CN744, DE & LC" which is an estimate of the costs to repair damages based on the final inspection. The Applicant also provided an updated lease balance statement, an invoice from Brisas Cleaning for unit cleaning totalling \$446.25, work order RM279456 for "Cabinets, Countertops and Hardware" detailing labour and materials totalling \$2,069.68, and work order TD280374 for "Interior Painting - fixing tenant damages" detailing materials and labour totalling \$2,457.19.

Prior to the hearing the Respondent provided as evidence a copy of their photographs taken before they handed in the keys, a document title "To Whom it May Concern", and another document detailing the maintenance issues, stating that the Respondents lived in the unit for seven years with nine people and that they knew they were moving out so they left the repairs until they moved out.

At the hearing we walked through the Applicant's estimate discussing the repairs and cleaning claimed.

Repairs of damages costing \$460 were claimed by the Applicant and were not disputed by the Respondents (aside from some comments about cost), these included:

- Living Room - \$10 to replace and install electrical cover;
- Bathroom - \$30 to reinstall globe, \$10 to replace sink stopper, \$50 to replace and install towel ring (Respondent thought the price was high but did not dispute the damage), \$10 to replace and install toilet paper bar, \$10 to replace and install one light switch cover;
- Master bedroom - \$10 to replace and install light switch cover, \$10 to replace and install door stopper;
- Bedroom #2 - \$60 to replace and install one window screen, \$120 to replace and install damaged trim around window and floor (Respondent thought the price was too high for some trim, but the Applicant explained this includes materials and labour to install), \$10 to replace and install electrical cover; and
- Bedroom #3 - \$120 to replace and install damaged trim around window, \$10 to replace and install one electrical cover.

Based on the evidence and testimony of the parties I am satisfied that the Respondents are responsible for these damages and that the costs claimed are reasonable. I find the Respondents owe \$460 for the costs of repairing these damages.

Other damages were challenged by the Respondent as being either unnecessary or maintenance issues that should be the responsibility of the Applicant:

- ***\$120 - Remove random items and dispose of them.*** The Respondent's position was that the few items that had been left behind could have been disposed of in the dumpster that was "100 feet away". The Applicant testified that few items left behind were too big to go in the dumpster and had to be taken to the dump, involving staff time and fees.

After considering the evidence and testimony of the parties I am satisfied it was necessary to dispose of these items at the dump and that the claim is reasonable. I find that the Respondents are responsible for this cost in the amount of \$120.

- ***\$480 - patch, paint where stickers peeled paint.*** The Respondent's position reflected in their evidence and at the hearing was that they should not have to pay for painting. They had lived in the unit for over 7 years and the unit should be painted by the Landlord as part of regular maintenance. The Applicant explained that the Respondents were not being charged for the full cost of painting, only the cost to patch and touch up the sections of the walls that were damaged when the stickers were removed or where there was damage to the drywall. The Applicant pointed to the work order provided as evidence documenting the full cost for painting and that the tenant was only being charged \$480 and not the full amount.

After considering the evidence and testimony of the parties I am satisfied that there was damage to the walls caused by the Tenant that required patching and touch up painting and that the charges for this work are reasonable. I find the Respondents are responsible for this cost in the amount of \$480.

- ***\$60 - repair front burner kitchen stove.*** The Respondent testified that the front burner stopped working early on in their tenancy but they didn't report it because it was safer for their children. It was their position that this was a maintenance issue. The Applicant testified that the Respondent was responsible for reporting maintenance issues and because they didn't report it they were responsible for the repair.

At the hearing I stated that I agreed with the Respondent that this was a maintenance issue and the fact that they hadn't reported it didn't mean that they should bear the associated cost. Under section 42 of the Act the tenant is responsible for repairing damages caused by their "wilful or negligent conduct". Ordinary wear and tear does not constitute damage.

Under subsection 30(5) a tenant shall give reasonable notice to the landlord of any substantial breach of the landlords obligation to repair. This section doesn't suggest that the tenant is responsible for the repair if they don't report it at that time.

Section 12 of the tenancy agreement "Tenant's Promises" includes under paragraph (e) that the tenant "Shall promptly notify the Landlord of any defect in or damage to the Premise and shall pay to the Landlord the cost of repairing damage resulting from the Tenant's failure to give such notice." In this case the element on the range was not working early in the tenant's tenancy, however, this did not result in any further damages that might be claimed under this obligation, it just delayed when the repairs happened.

After considering the evidence and testimony, I am not convinced that the repair of the stove is the responsibility of the Respondents. The Applicant's claim for costs to repair the stove is denied.

- ***\$200 - Replace and install bathroom door.*** The Respondent testified that they caused the damages to the door in order to rescue their two-year-old child who was stuck in the bathroom when the door knob fell apart and wouldn't work from either the outside or inside. In considering that it was 10:00 at night, that there would be cost for a call-out by the Landlord, that the child was extremely upset and screaming, and that there was no other way of opening the door from the outside, the Respondent kicked in the door to get to their child. As the damages were in response to the malfunction of the hardware, they felt that they shouldn't have to pay for these damages.

The Applicant's photographs and exit inspection report document the damages to the door, and at the hearing the Applicant testified that the problem with the hardware should have been reported and they would have sent someone out, even at 10:00 p.m.

In reviewing this claim after the hearing I considered if the damages were as a result of wilful or negligent conduct on the part of the Respondent. According to the Respondent's testimony the door knob worked until it didn't work, and because of this malfunction they felt they had no other choice but to break the door in. They would not have taken the action leading to the damages if the door knob had worked as it should. Based on the evidence and testimony of the parties I am convinced that the Respondent likely had no other choice considering the situation, and I am satisfied that their conduct was neither wilful nor negligent. For these reasons the Applicant's claim for costs to repair the bathroom door are denied.

- ***\$120 - repair water damage on cabinet doors bathroom.*** The Respondent claimed that the water damage to the doors on this cabinet was as a result of over seven years of use by nine people washing and cleaning their teeth, and was ordinary wear and tear. The Applicant stated that the Respondent's family were responsible for making sure that the water didn't damage the cabinet.

Again, after the hearing I considered if the damage to the cabinet was the result of wilful or negligent conduct or, as the Respondent claimed, the result of ordinary wear and tear. I also re-examined the photographs provided by the Applicant.

I agree that the cabinet doors are water damaged, however, this may be because of the quality of the finish (after all, water was not sitting on the doors for any period of time) and had years of use by a large family. I am not convinced that the damages were caused by the wilful or negligent conduct of the Tenants. The Applicant's claim for this cost is denied.

- **\$25 - replace and install door knob master bedroom.** This was not noted on the Applicant's inspection report. It is not clear from the photographs or evidence that this is as a result of wilful or negligent conduct by the Respondents and is not ordinary wear and tear. The Applicant's claim for this cost is denied.
- **\$60 - replace and install lock on window #2 bedroom.** This item was not noted on the Applicant's inspection report. The Respondent testified that the lock fell out just after they occupied the unit and that this was a maintenance issue. Once again, the fact that it was not reported earlier did not result in further damages or additional costs to the landlord. I am not convinced that this was damage caused by the Tenants and not a maintenance issue. The Applicant's claim for this cost is denied.
- **\$600 - full clean required including washing walls and removing sticker residue off walls, windows, light switch covers and fridge.** At the hearing the Respondent challenged this claim, testifying that they had hired someone to clean the unit and had offered to return to do further cleaning, and that their photos provided as evidence show the unit was clean.

The Applicant's photographs and exit inspection report documents show in some detail the areas needing further cleaning. The Applicant testified that in addition to the cleaner's time (invoice for \$446.25) the Applicant's staff also spent time cleaning the unit and said that the Respondent's photos did not provide the level of detail that was required to identify cleaning and damages. They referred to their photos showing the stickers and marker damage throughout the unit, and referred to the photograph of the oven to demonstrate some of the work required.

After considering the evidence and testimony of the parties I am satisfied that further cleaning of the unit was required to bring the rental unit to a state of ordinary cleanliness as required under subsection 45(2) of the Act, and that the costs claimed are reasonable. I find that the Respondents owe the Applicant \$600 for cleaning.

Based on the above, I find that the Respondents owe the following for the repairs of damages and cleaning:

Undisputed amounts total	\$460.00
Remove random items and dispose	\$120.00
Patch and Paint	\$480.00
Full Clean	<u>\$600.00</u>
Subtotal	\$1,660.00
Admin fees 10%	\$166.00
GST 5%	<u>\$91.30</u>
TOTAL	<u>\$1,917.30</u>

At the hearing the Respondent questioned the charges for administration fees and GST. The Applicant explained that they were required to charge GST and regularly charged administration fees to cover costs of purchasing and organizing the work. I stated that in my experience these fees were routinely charged.

Orders

An order will be issued requiring the Respondents to pay the costs for repairs and cleaning in the amount of \$1,917.30 (p. 42(3)(e), p. 45(4)(d)).

Janice Laycock
Rental Officer